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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) No. 6197 of 2007

PETITIONER : Smt. Gouri Bai Wife of Shri Kashiram Sahu, aged about 48 years, Sarpanch, Gram Panchayat Bhawanipur, Tahsil Palari, District Raipur (C.G.)

VERSUS

RESPONDENTS :
1. The Additional Collector, Balodabazar, District Raipur (C.G.)
2. The Sub Divisional Officer (Revenue) Prescribed Authority, Balodabazar, District Raipur (C.G.)
3. The Naib Tahsildar, Rupesh Kumar Verma, Presiding Officer, Palari, District Raipur (C.G.)
4. Aghanuram Son of Mannulal Nishad.
5. Taranlal Son of Bhukhan Singh Dhruv.
6. Shakuntala Wife of Bodhiram Sahu
7. Umrao Singh Son of Latel Dhruv
8. Parmanand son of Mantram Sahu
9. Chhita Bai Wife of Pardeshi Sahu
10. Amrit Bai Wife of Keshavram Dhruv
11. Dileshwar Son of Tejram Sahu
12. Chandrakala Wife of Poonam Sahu
13. Nirmala Bai Wife of Ghanshyam Sahu
14. Budharawaram Son of Baisakhu Nishad
15. Prem Shankar Son of Guharam Sahu
16. Tilakram Son of Jantram Nishad
17. Narottam Son of Suklal Nishad
18. Maniram Son of Devada Satnami

    The respondent No. 3 to 14 are resident of village Bhawanipur and respondent No. 15 to 17 are resident of village Junwani, Village Panchayat Bhawanipur, Tahsil Palari, District Raipur (C.G.)
19. State of Chhattisgarh, Through: The Secretary, Department of Panchayat and Social Welfare, D.K.S. Bhawan, Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

SB: Hon'ble Shri Satish K. Agnihotri, J.

Present: Shri P.P.Sahu, Advocate for the petitioner.
Shri Arvind Dubey, Panel Lawyer for the State/respondent No. 1 to 3 and 19.

ORDER

(Passed on 30th day of October, 2007)

The affidavit of service and the copies of acknowledgement filed by the petitioner on 29.10.2007 are taken on record.

1. Learned counsel appearing for the petitioner submits that the Additional Collector, Baloda Bazar, District Raipur, while considering the reference under section 21(4) of the Chhattisgarh Panchayat Raj Avam Gram

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Swaraj Adhiniyam, 1993, dismissed the reference on the ground of three days delay. The Additional Collector has dismissed the reference on merit also without calling for records and without considering the facts of the case.

2. Learned counsel further submits that according to the petitioner, there was no delay as the time consumed for obtaining the certified copy of the resolution was not taken into consideration while computing the period of limitation i.e. 7 days.

3. Notice was issued to the respondents on 17.10.2007. The petitioner has filed an affidavit of service, indicating that the respondent No. 13, 16, and 17 have accepted Hamdast notice. The remaining respondents i.e. respondent No. 4 to 12, 14, 15 and 18 have declined to accept the notice on the ground that the notice was not served through the process server. In view of the fact that some of the respondents have declined to accept the notice, it is deemed to have been served upon the respondents. The respondent No. 13, 16 and 17, despite service of notice have failed to appear or make any representation before this Court.

4. After having heard learned counsel for the parties, it appears that the Additional Collector, Baloda Bazar, has not applied his mind while computing the period of limitation. Even otherwise, the Additional Collector ought to have given one opportunity to the petitioner to file appropriate application/affidavit explaining the delay, if there was any delay. The decision of the Additional Collector on merit is not after examining the documents and considering the facts relevant for the purpose of decision.

5. In view of the foregoing, the impugned order dated 25.09.2007 (Annexure P/9) is set aside. The matter is remitted back to the Additional Collector, Baloda Bazar for consideration of the reference after notice to all the concerned and pass appropriate order, in accordance with law.

6. Accordingly, this petition is allowed.

Sd/-
Satish K.Agnihotri
Judge

Amit